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Court Clerk
Michigan Supreme Court
PO Box 30052
Lansing, MI 48909



Re: ADM File No. 2010-19
(Revision of MCR 7.100 et seq., Appeals to Circuit Court)

Dear Honorable Justices:

I am writing to comment on the proposed replacement of MCR 7.100 et seq., Appeals to Circuit Court. See 489 Mich 1247-1284. My main concerns are that the proposed rule does not contain the "prison mailbox rule" and that it shortens the time for filing briefs from 28 days to 14 days.

1. Proposed MCR 7.100 does not contain the "prison mailbox rule."

On February 25, 2010, this Court adopted the prison mailbox rule, which allows pro se prisoners' appeals to be considered timely filed on the date submitted to prison officials for mailing to the court, under certain conditions. MCR 7.105(B)(3), 7.205(A)(3), and 7.302(C)(3). In adopting this rule, this Court was following the federal courts and many other state courts and was responding to frequent unfair dismissals of pro se prisoner appeals. 485 Mich cxxxviii, n 4 (Kelly, C.J., concurring) (citing In re Kinney, 483 Mich 944 (2009)(appeal dismissed where court received it more than two weeks after prisoner properly submitted it for mailing)).

In re Kinney was my case, and I am humbled by the role it played in this Court's historic decision to ensure that all citizens receive a fair opportunity to have their day in court.

The omission of the prison mailbox rule from the proposed new rule appears to be inadvertent. The proposed rule was submitted to the Court in May 2010, just days after this Court adopted the prison mailbox rule on February 25, 2010. So the committee that wrote the proposed rule did not have the benefit of this Court's intention to adopt the prison mailbox rule.

This inadvertent omission could be fixed in two ways. First, the Court could simply add the prison mailbox rule to the proposed rule MCR 7.102(6), which defines the date of filing.

Second, and preferably, the Court could place the prison mailbox rule in one location and apply it to all filings by pro se prisoners, instead of having it scattered throughout the Michigan Court Rules and applying it to only appeals. For example, the Court could add the prison mailbox rule as a new subdivision of MCR 1.108 "Computation of Time." This would avoid confusion and correct the unwarranted distinction between appeals and other papers. The federal courts apply the prison mailbox rule to all papers. See, eg, Towns v. U.S., 190 F3d 468, 469 (CA 6, 1999). This makes sense because prisoners are just as powerless to ensure the timely filing of motions, briefs, and other documents as they are appeals, and the untimely filing of

such documents can be just as prejudicial.

Another reason to make the prison mailbox rule apply to all filings by pro se prisoners is that the proposed rule MCR 7.111(A)(1)(a) shortens the time for prisoners to file their briefs on appeal from 28 days to 14 days, as discussed below.

2. Proposed MCR 7.111(A)(1)(a) cuts the time for filing the brief in half.

The current procedure for appealing from administrative agencies under MCR 7.105, which includes prison disciplinary appeals under MCL 791.255, would be governed by Proposed MCR 7.119. The current rule, MCR 7.105(K)(1), gives the appellant 28 days to file his brief (from the date that the agency files its record with the court), with a possible 28-day extension. The proposed rule cuts both of these time limits in half.

Proposed MCR 7.119 does not specify the time for filing briefs. However, Subsection (A) of that rule says, "Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply." Proposed MCR 7.111(A)(1)(a) says that the appellant only has 14 days to file a brief, with a possible 14-day extension.

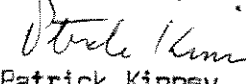
In my sixteen years in prison and thirteen years helping other inmates with their legal matters, I have observed that prisoners who appeal to circuit court almost invariably do so without the assistance of an attorney. Without an attorney and without the prison mailbox rule, it will be virtually impossible for pro se prisoners to file timely briefs. Prisoners will learn that the time limit started 3-5 days after it started, when they receive notice of filing of the agency record in the mail. Prison policy allows prison officials up to 2 business days to process outgoing legal mail, and the librarian at this facility takes at least 3 business days to make photocopies. Additionally, the US Postal Service will take 2-3 days to deliver the prisoner's brief to the court, assuming the MDOC does not cause a delay like it did in my case, In re Kinney, supra.

That means a 14-day deadline will give a prisoner only 3-6 days to research and prepare a brief. But 3-6 days for a prisoner is less than 3-6 days for others because prisoners are only allowed three 2-hour sessions of law library per week, and they must either write their briefs by hand or use a typewriter (not a computer). I would find this challenging. The average prisoner wouldn't stand a chance.

Therefore, I urge this Honorable Court to (1) adopt a single, catchall prison mailbox rule for all documents filed by pro se prisoners who swear to the date of proper mailing (or at least amend the proposed MCR 7.100 et seq to include the prison mailbox rule), and (2) amend the proposed MCR 7.111(A)(1)(a) to allow 28 days to file the brief on appeal, instead of 14 days.

Thank you very much for your time and consideration.

Respectfully,


Patrick Kinney, MDA